

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

GURMAN, BLASK & FREEDMAN

CHARTERED

SUITE 500  
1400 SIXTEENTH STREET, N.W.  
WASHINGTON, D.C. 20036

(202) 328-8200  
TELECOPIER: (202) 462-1784

RECEIVED

MAY 28 1996

May 28, 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

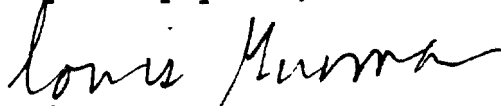
William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Stop Code 1170  
Washington, D.C. 20554

Re: Notice of Ex Parte Communication  
Notice of Proposed Rulemaking and Order,  
ET Docket No. 95-183, PP Docket No. 93-253

Dear Mr. Caton:

On May 23, 1996 at 5:30 p.m., undersigned counsel on behalf of Commco L.L.C., Kurt Wimmer and Jim Fleming on behalf of Columbia Capital Corp./Columbia Millimeter Communications, L.P. and Jim Wiessenberg on behalf of DCT Communications, Inc. met with Jackie Chorney of the Chairman's office regarding the processing proposal contained in the enclosed letter dated May 15, 1996.

Very truly yours,

  
Louis Gurman

Enclosure

May 15, 1996

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 "M" Street, N.W. Room 814  
Washington, D.C. 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 "M" Street, N.W. Room 802  
Washington, D.C. 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 "M" Street, N.W. Room 844  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 "M" Street, N.W. Room 832  
Washington, D.C. 20554

**Re: ET Docket 95-183 and PP Docket No. 95-183  
Freeze of Pending 39 GHz Applications and Amendments**

Dear Commissioners:

We, the undersigned parties, who either hold authorizations or have pending applications, or both, to construct and operate Point-To-Point Microwave Radio Service stations in the 39 GHz band urge you at a minimum to resume immediately the processing of all minor amendments filed as a matter of right on or before December 15, 1995. These amendments were filed without actual notice of the Commission's freeze imposed by its Notice of Proposed Rulemaking and Order, FCC 95-500, released December 15, 1995 ("Freeze Order").

Freeze of Pending 39 GHz  
Applications  
May 15, 1996  
Page 2

This aspect of the freeze, acknowledged to be unprecedented by the Wireless Bureau staff and which is most susceptible to successful legal challenge, has inflicted substantial harm upon us and our business plans. Therefore, we propose to work cooperatively with the Commission to share database information for the purpose of allowing these uncontested applications to be processed and granted. Such a result is consistent with the Commission's Rules, the Communications Act and basic notions of fundamental fairness. We respectfully request a response to this offer within the next two weeks.

We are asking for a response by a date certain because it has been more than four months since a Petition for Reconsideration and an Emergency Motion For Stay were filed, and still there has been no action nor any meaningful report on the status of this request for relief. During that time the uncertainty of this situation has had a direct, negative impact upon the implementation of our business plans.

Since the release of the Freeze Order, the Commission has received letters first from Senator Larry Pressler, Chairman of the Senate Commerce Committee, and Senator Tom Daschle, the Minority Leader of the Senate, and later from Representatives Tom Bliley and John Dingell, the Chairman and Ranking Member of the House Commerce Committee, both of which raised serious questions about whether the Commission does, in fact, have the statutory authority to freeze retroactively applications eligible for grant in order to create mutually exclusive situations for auction.

Congressmen Bliley and Dingell cautioned the Commission that:

Congress expressly limited the Commission's auction authority to situations involving mutually exclusive applications and, moreover, directed the Commission to avoid mutually exclusive applications situations.

As noted in both letters, Section 309(j)(6)(E) of the Communications Act specifically directs the Commission to make every effort to avoid mutual exclusivity by use, among other things, of engineering solutions to avoid frequency conflicts. This is precisely what the 39 GHz applicants who filed amendments prior to December 15, 1995, attempted to do. The freeze nullified those efforts by not allowing the processing of amendments filed as of right to accomplish the purposes of Sections 309(j)(6)(E).

Freeze of Pending 39 GHz  
Applications  
May 15, 1996  
Page 3

Further, the Commission's action freezing the processing of conflict-resolving amendments and of other minor amendments to bring applications into conformity with FCC rules is fundamentally unfair to parties, such as ourselves, who relied in good faith on the rules and procedures then in existence. As noted by Senators Pressler and Daschle:

By virtue of either completing the application process or amending already submitted applications to eliminate mutual exclusivity concerns, applicants have in essence established a fairly reasonable expectation that they would not be subjected to the competitive bidding process.

The amendments filed on or before December 15, 1995, eliminated mutual exclusivity in markets that are critical to the success of the respective business plans of the undersigned applicants. Attached are examples of such amendments in which the undersigned have, through the use of engineering solutions and frequency coordination mandated by Section 309(j)(6)(E), undertaken at their own expense to eliminate frequency conflicts.

It is estimated that after giving effect to all such amendments, the applications caught in the freeze represent on a population adjusted basis only five to six percent of the spectrum potentially available for auction in the 37-40 GHz band. Accordingly, the impact of granting the requested relief to the undersigned upon the Commission's proposed competitive bidding regime would be no more than de minimis. Maintenance of the freeze, on the other hand, has a significant detrimental effect on the business plans of the undersigned, who spent millions of dollars in reliance on the Commission's Rules. Thus, even if the Commission's retroactive suspension of the amendment rule were lawful, which it is not, it would be difficult to defend such action on grounds of public policy or any conception of fairness.

We are prepared to undertake at our own expense the provision of a database that demonstrates that our amendments filed as of right by December 15, 1995, eliminated the overwhelming majority of mutually exclusive situations. This effort will require access to the FCC's 39 GHz database to assure consistency and accuracy. This kind of private sector/public sector cooperation by means of shared databases was precisely the type of assistance that permitted the resumption of the processing and ultimate grant of many pending 800 MHz SMR applications while the Commission resolved its wide-area licensing rulemaking.

Freeze of Pending 39 GHz  
Applications  
May 15, 1996  
Page 4

We urge the Commission to (a) resume immediately the processing of the uncontested 39 GHz applications, and (b) accept the offer of the database as a means of facilitating resumed processing.

Very truly yours,

Altron Communications, L.C.

Columbia Capital Corp./  
Columbia Millimeter  
Communications, L.P.

Commco, L.L.C.

DCT Communications, Inc.

ELAR Cellular

GHz Equipment Company, Inc.

No Wire, L.L.C.

PLAINCOM, INC.

Sintra Capital Corporation

Spectrum Communications, L.C.

cc: All Legal Assistants of the Members of Commission

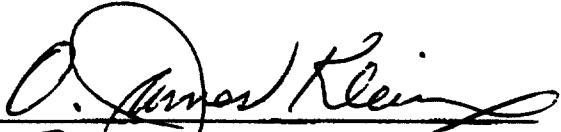
Wireless Bureau Personnel

All Chairmen and Ranking Members of Senate/House Commerce  
Committees and Communications Subcommittees  
Senator Daschle

Respectfully submitted

ALTRON COMMUNICATIONS, L.C.

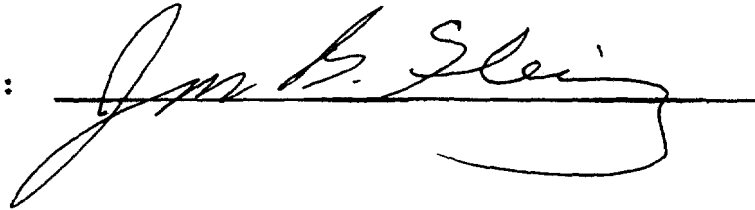
By:

  
President-Manager

Respectfully submitted,

COLUMBIA CAPITAL CORPORATION/  
COLUMBIA MILLIMETER COMMUNICATIONS, L.P.

By:

A handwritten signature, likely "James B. Stein", is written over a horizontal line. The signature is in cursive and extends to the right of the line.

Respectfully submitted

COMMCO, L.L.C.

By:

A handwritten signature in cursive script, appearing to read 'Shin', is written over a horizontal line.



Respectfully submitted

DCT COMMUNICATIONS, INC.

By:

J. H. W. M.

Respectfully submitted

ELAR CELLULAR

By:

A handwritten signature in cursive script, appearing to read "Jerome K. Black", is written over a horizontal line.

Respectfully submitted

GHZ EQUIPMENT COMPANY, INC.

By: Steven F. Sutter

Respectfully submitted

NO WIRE, L.L.C.

By:

\_\_\_\_\_

Respectfully submitted,

PLAINCOM, INC.

By: F Edward Clinton

Respectfully submitted

SINTRA CAPITAL CORPORATION

By:

John D. Pinto

Respectfully submitted,

SPECTRUM COMMUNICATIONS, L.C.

By: *BF Investments, Inc. - MANAGER*

By: *Bruce R. Francis*  
*President*

**EXAMPLE OF MARKETS WHERE MINOR AMENDMENTS HAVE BEEN FILED**

<b>MARKET</b>	<b>APPLICANT</b>	<b>APPLICATION DATE</b>	<b>PUBLIC NOTICE DATE</b>	<b>MINOR AMENDMENT DATE</b>
Albuquerque, NM	Altron Comm.	03/17/95	04/05/95	11/30/95
Anchorage, AK	PLAINCOM, INC.	07/14/95	07/26/95	12/08/95
Bakersfield, CA	Mountain Microwave	02/21/95	03/08/95	11/30/95
Bellingham/Puget Sound, WA	PLAINCOM, INC.	07/14/95	07/26/95	12/08/95
Charleston, WV	Columbia Millimeter	07/19/95	08/02/95	12/14/95
Detroit, MI	Commco, L.L.C.	08/29/94	01/18/95	11/13/95
Eugene, OR	Sintra Capital	07/16/95	08/02/95	12/08/95
Fargo, ND/MN	Sintra Capital	07/16/95	08/02/95	12/08/95
Fresno & South Bay area, CA	Columbia Capital	03/20/95	04/05/95	11/13/95
Greenville, SC	Sintra Capital	07/25/95	08/09/95	11/13/95
Houston, TX	DCT Comm., Inc.	03/20/95	04/05/95	11/13/95
Lafayette, LA	PLAINCOM, INC.	07/14/95	07/26/95	12/08/95
Lexington, KY	DCT Comm., Inc.	10/02/95	10/25/95	11/21/95
Lima & northwest, OH	Columbia Millimeter	07/19/95	08/02/95	12/14/95
Longview/Tyler, TX	Commco, L.L.C.	09/17/95	07/19/95	11/24/95
Madison & south central, WI	Commco, L.L.C.	09/17/95	07/19/95	11/24/95
Nashville & north central, TN	Sintra Capital	07/25/95	08/09/95	12/08/95
Pittsburgh/Butler, PA	DCT Comm., Inc.	03/20/95	04/05/95	11/13/95
Santa Rosa, CA	Spectrum Comm.	08/14/95	08/30/95	12/04/95
Tulsa & northeast, OK	Commco, L.L.C.	08/29/94	01/18/95	12/08/95
Worcester & western, MA	Sintra Capital	07/25/95	08/09/95	11/13/95